

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Closed Captioning of Video Programming	)	CG Docket No. 05-231
	)	
Telecommunications for the Deaf and Hard of	)	PRM11CG
Hearing, Inc.	)	
Petition for Rulemaking	)	

**REPLY COMMENTS OF COMCAST CORPORATION**

Comcast Corporation and NBCUniversal (“Comcast”) hereby file reply comments in response to the Further Notice of Proposed Rulemaking (“FNPRM”) in the above-captioned proceeding.<sup>1</sup> The record strongly supports adoption of Comcast’s burden-shifting proposal. The proposal will provide strong incentives for programmers and video programming distributors (“VPDs”) to deliver high-quality captions, facilitate the rapid resolution of complaints in a consumer-friendly way, and eliminate the gaps in the existing VPD-centric compliance regime. Claims that the proposal will add complexity to the complaint process and lead to finger-pointing between VPDs and programmers are unfounded. The proposal will have the opposite effects. Comcast reiterates its request that the Commission adopt the proposal prior to the effective date of the new caption quality rules next January.

**I. THE BURDEN-SHIFTING PROPOSAL HAS WIDESPREAD SUPPORT.**

The burden-shifting proposal enjoys strong support among a number of parties that filed comments in this proceeding.<sup>2</sup> For example, Charter *et al.* note that the proposal “would better

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<sup>1</sup> See *In re Closed Captioning of Video Programming; Telecommunications for the Deaf and Hard of Hearing, Inc., Petition for Rulemaking*, Report & Order, Declaratory Ruling, & Further Notice of Proposed Rulemaking, 29 FCC Rcd. 2221 (2014) (“FNPRM” or “Caption Quality Order”).

<sup>2</sup> See Am. Cable Ass’n (“ACA”) Comments at 6-7; AT&T Comments at 5-6; Charter Commc’ns, Inc., Cablevision Sys. Corp., Mediacom Commc’ns Corp., Cequel Commc’ns, LLC d/b/a Suddenlink Commc’ns, and Time Warner Cable Inc. (“Charter *et al.*”) Comments at 10-11; DirecTV Comments at 7-8.

align legal responsibility with real-world roles . . . currently in place” and “streamline the rules and clarify the obligations for both VPDs and programmers while offering increased benefits to consumers by making one party or the other clearly responsible for each step in the captioning process.”<sup>3</sup> Likewise, AT&T supports the proposal because “it would recognize the shared responsibility for delivering high quality closed captioning to users and the significant role that video programmers play in resolving closed captioning problems.”<sup>4</sup> And DirecTV adds that the proposal “would represent an appropriate allocation of responsibilities for failure to comply with any of the Commission’s television captioning rules.”<sup>5</sup>

Telecommunications for the Deaf and Hard of Hearing, Inc. (“TDI”) and other advocacy groups (collectively “TDI *et al.*”) urge the Commission to evaluate compliance models based “on how well they incentivize high-quality captioning, aid the complaint process, and facilitate enforcement.”<sup>6</sup> Comcast believes that the record in this proceeding provides compelling evidence that the burden-shifting proposal satisfies these three criteria.

First, the proposal will provide strong incentives for programmers and VPDs to deliver high-quality captions to consumers. As Comcast pointed out in its initial comments, “if VPDs and programmers *both* face potential liability for non-compliance under the rules, *each* party will be highly motivated to resolve caption issues for which it is responsible.”<sup>7</sup> Other commenters

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<sup>3</sup> Charter *et al.* Comments at 12; *see also* DirecTV Comments at 7.

<sup>4</sup> AT&T Comments at 5.

<sup>5</sup> DirecTV Comments at 8.

<sup>6</sup> Telecomm. for the Deaf and Hard of Hearing, Inc., Nat’l Ass’n of the Deaf, Hearing Loss Ass’n of Am., Ass’n of Late-Deafened Adults, Cerebral Palsy and Deaf Org., Deaf and Hard of Hearing Consumer Advocacy Network, Cal. Coal. of Agencies Serving the Deaf and Hard of Hearing, Am. Ass’n of the Deaf-Blind, Speech Commc’n Assistance by Tel., and Tech. Access Program at Gallaudet Univ. (“TDI *et al.*”) Comments at v.

<sup>7</sup> Comcast Comments at 3 (emphasis in original).

further underscore this point.<sup>8</sup> In contrast, as TDI *et al.* acknowledge, “holding video programmers legally responsible for ensuring quality indirectly through contract and indemnification is undoubtedly less efficient than holding them directly responsible for compliance.”<sup>9</sup> Numerous other commenters also point out that the contract/indemnification model is less likely to result in high-quality captions. For example, AT&T notes that, while VPDs take measures to encourage video programmers to improve closed captioning, they “have little leverage to force programmers to improve the quality of closed captioning.”<sup>10</sup> The American Cable Association (“ACA”) also states that “[e]specially for smaller VPDs, contractual representations do not induce programmers to comply with the closed captioning rules.”<sup>11</sup>

Second, the burden-shifting approach will result in the prompt resolution of closed captioning complaints. Responsibilities are allocated based on which party in the distribution chain is best positioned to address the relevant captioning issue. As TDI *et al.* note in their comments, “while VPDs are in the best position to address equipment-related problems, programmers are better positioned in practice to ensure the quality of their programs’ captions.”<sup>12</sup> Consequently, as DirecTV explains, if the VPD’s investigation reveals that the issue

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<sup>8</sup> See ACA Comments at 6 (“By holding the programmer directly responsible when the captioning problem is due to its own error, the programmer will have the appropriate direct exposure to any enforcement actions when closed captioning issues arise, as well as being subject to public scrutiny when it fails to provide appropriate captioning.”); see also Charter *et al.* Comments at 9 (“Under a regulatory model that assigns liability according to actual responsibility, each participant involved in the creation and delivery of captioned programming would be incented to focus entirely on fulfilling its specific regulatory charge.”); AT&T Comments at 3; DirecTV Comments at 8.

<sup>9</sup> TDI *et al.* Comments at 6.

<sup>10</sup> AT&T Comments at 4; see also Comcast Comments at 4 (noting various shortcomings with contract-based approach to enforcement).

<sup>11</sup> ACA Comments at 5.

<sup>12</sup> TDI *et al.* Comments at 6. Furthermore, as Verizon and others point out, the best practices adopted as part of the *Caption Quality Order* can only be implemented by the programmer that is responsible for contracting with

lies with the programmer, not the VPD, “it is more efficient for the investigation and resolution of the problem to become the responsibility of the [programmer], who is uniquely situated to research the efficacy of its own captioning efforts and determine what steps should be taken to address any shortcomings.”<sup>13</sup> In contrast, placing the compliance burden entirely on VPDs would require “VPDs to play policeman to hundreds of programmers with regard to the closed captioning rules, even though ‘video programmers typically are the entities with the most direct control over the quality of closed captioning of their programming.’”<sup>14</sup>

Third, the burden-shifting proposal will improve Commission enforcement of the rules. The proposal would eliminate any potential “liability gap” under the existing compliance regime by clearly delineating which party is responsible for compliance with the relevant captioning requirements.<sup>15</sup> The proposal also will facilitate the Commission’s enforcement efforts. The Commission and complainants will be informed about the progress of the investigation into complaints.<sup>16</sup> Moreover, “with the ability to directly contact the owner whose programming is the subject of complaints, the Commission will be able to get first-hand information on what problems may have been encountered and what remediation steps are available, rather than having these explanations filtered through another party.”<sup>17</sup>

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caption service providers, so it would be “impractical to impose some oversight obligation on video programming distributors for improvements to captioning quality.” Verizon Comments at 7; *see also* DirecTV Comments at 5-6; Charter *et al.* Comments at 4-5.

<sup>13</sup> DirecTV Comments at 8; *see also* Charter *et al.* Comments at 10 (arguing that shared liability will result in more prompt and effective resolution of complaints); AT&T Comments at 5 (same).

<sup>14</sup> ACA Comments at 4 (quoting *Caption Quality Order* ¶ 52); *see also* DirecTV Comments at 8 (noting efficiency gains from shared liability); Verizon Comments at 5 (stating VPDs “are at least two steps away from the actual captioning process and can have little actual impact on how well the closed captioning is produced in any specific program”).

<sup>15</sup> *See* Comcast Comments at 5-6.

<sup>16</sup> *See id.* at 7-8; *see also* Charter *et al.* Comments at 11.

<sup>17</sup> Verizon Comments at 12.

The burden-shifting proposal will achieve TDI *et al.*'s goals in this proceeding, and do so in a consumer-friendly way since the VPD will be the entry point for all consumer complaints received from the Commission and consumers will be apprised of the resolution of the captioning issue. Comcast also believes that, given the advantages of the proposal and to avoid confusion, the Commission should adopt this approach for all TV captioning obligations, not just the new caption quality rules.<sup>18</sup> As ACA aptly states, “[s]o long as the Commission extends compliance responsibilities to video programmers in some aspects of closed captioning, there is no reasonable justification to not extend compliance responsibilities to video programmers for all closed captioning obligations.”<sup>19</sup> A uniform approach would provide a simpler consumer experience and improve efficiencies in how the Commission oversees its TV captioning rules.<sup>20</sup>

## **II. CRITICISMS OF THE BURDEN-SHIFTING PROPOSAL MISS THE MARK.**

### **A. Programmers Are Incorrect In Asserting That VPDs Are Necessary for the Resolution of the “Overwhelming Majority” of Captioning Complaints.**

CBS *et al.* (“Programmers”) assert that the Commission should adopt a VPD-centric compliance regime because “the overwhelming majority of captioning complaints raise issues that require the involvement of [multichannel video programming distributors (“MVPDs”)] for resolution.”<sup>21</sup> In support of this claim, the Programmers cite to a programmer declaration claiming that approximately 90% of captioning issues identified in the complaints are based on problems outside programmers’ control, including MVPD equipment errors.<sup>22</sup> These assertions

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<sup>18</sup> See Comcast Comments at 5.

<sup>19</sup> ACA Comments at 9; *see also* Charter *et al.* Comments at 10; DirecTV Comments at 8 (stating the rationale for applying burden-shifting to captioning quality applies to extending burden-shifting to all closed captioning); Verizon Comments at 12-13.

<sup>20</sup> See Comcast Comments at 5.

<sup>21</sup> CBS, Fox, Time Warner Inc., Viacom, Walt Disney, & Scripps Networks (“Programmer”) Comments at 3.

<sup>22</sup> See *id.*, Decl. of Ben Bongiovi ¶ 3.

are inapt because they address complaints relating to the basic captioning rules, not the caption quality rules recently adopted by the Commission. The *Caption Quality Order* specifically contemplates that programmers will take the lead in ensuring that the quality of captions included in their program streams complies with the industry best practices and the Commission's requirements for accuracy, completeness, synchronization, and placement.<sup>23</sup> It defies reality for Programmers to imply that the "overwhelming majority" of caption quality-related problems will stem from VPDs' pass-through of closed captions.<sup>24</sup>

Furthermore, even when focusing on complaints involving the basic captioning requirements, the record and Comcast's experience do not support the Programmers' claims. AT&T notes that over the past three years, approximately 50% of the closed captioning complaints it received were problems that originated with the video programmer.<sup>25</sup> Likewise, Comcast has conducted its own internal survey of 2013 customer complaints that required engineering follow-up and found that closed captioning problems were outside the control of the VPD in over 40% of cases. Comcast reviewed 426 complaints, including both complaints received from the Commission and directly from customers, and found that 177 of the complaints (41.5%) involved captioning issues that occurred upstream from Comcast, while the

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<sup>23</sup> See *Caption Quality Order* ¶ 52. Various commenters underscore the central role that programmers will play in complying with the caption quality requirements. See AT&T Comments at 3 ("[V]ideo programmers are in the best position to address closed captioning quality issues at these earliest stages of production."); Verizon Comments at 6 ("Equipment that properly passes through closed captioning does not insert misspellings, nor does it have the capability of correcting them."); DirecTV Comments at 5-6 (stating the programmer best practices recognize the critical role that programmers play in captioning quality).

<sup>24</sup> See Verizon Comments at 12 ("While video programming distributors may have some leverage in ensuring that the video programming they distribute *includes* captioning, they have little impact on the contractual relationships between video programming owners and captioning vendors that enforce the quality of those captions.") (emphasis in original). Notably, under the burden-shifting proposal, any issue within the VPD's control will be addressed by the VPD as the initial point of contact. Therefore, if a consumer complaint is the result of an issue with the VPD's equipment, the VPD will resolve the issue without involving the programmer.

<sup>25</sup> AT&T Comments at 5.

remainder involved issues on Comcast's end.<sup>26</sup> Of the 177 complaints involving upstream issues, 103 of the complaints were for cable networks and 74 were for broadcast stations/networks.<sup>27</sup>

Contrary to Programmers' claims,<sup>28</sup> the Commission would have a "reasoned basis" for adopting the burden-shifting proposal. The new caption quality requirements provide a significant "changed circumstance" supporting a new approach on compliance with the TV captioning rules. And the complaint data in the record from Comcast and other VPDs regarding complaints under the existing captioning rules – data which appear to involve sample sizes far larger than anything described by the Programmer declarations – further refute Programmers' claims and underscore that a compliance regime that places obligations on both programmers and VPDs is fully justified.<sup>29</sup>

**B. The Burden-Shifting Proposal Will Encourage Collaboration Between VPDs and Programmers.**

Programmers assert that "Comcast's proposal would discourage collaboration [between VPDs and programmers] and would harm the public interest by prioritizing blame-shifting over solving a consumer's captioning problem."<sup>30</sup> This claim appears rooted in the view that VPDs will have strong incentives to conduct "cursory investigations" of customer complaints, which, in turn, will trigger disputes between VPDs and programmers as to which entity is responsible for

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<sup>26</sup> See Decl. of Chris Bygrave ¶ 4.

<sup>27</sup> See *id.*

<sup>28</sup> See Programmer Comments at 7-9.

<sup>29</sup> Additionally, Programmers ask the Commission to engage in an analysis of its database of complaints to determine how often complaints require VPD involvement to resolve. See *id.* at 8-9. The Commission is, of course, free to consult its database of complaints under the basic captioning rules, but for the reasons articulated above, such complaint data are inapt since they do not involve complaints under the new caption quality requirements.

<sup>30</sup> *Id.* at 10.

the problem.<sup>31</sup> These claims are without merit. The notion that VPDs would have incentives to “pass the buck” to programmers disregards the fact that VPDs will continue to be responsible for meeting their pass-through obligations under the rules, including specific requirements relating to their equipment.<sup>32</sup> If a VPD fails to properly investigate whether its equipment is at fault for a captioning problem, it risks being subject to potential penalties in an enforcement action. Consequently, the VPD has strong incentives to investigate complaints thoroughly before concluding that the programmer is responsible for the issue.

Furthermore, as several commenters point out,<sup>33</sup> the burden-shifting approach builds on existing programmer and VPD practices for investigating caption-related complaints, so it is simply not credible for Programmers to argue that the proposal will suddenly lead to increased disputes between programmers and VPDs. In fact, the proposal is aimed at avoiding this type of finger-pointing by making the VPD responsible for the initial investigation of a complaint.<sup>34</sup> Comcast’s real-world experience in resolving captioning complaints supports this approach. For example, in many cases, Comcast fields complaints that involve captioning issues with a local broadcast station. Both Comcast and the broadcaster are subject to the Commission’s captioning rules, and are generally able to work cooperatively and expeditiously to resolve the problem. Comcast will typically take the lead in first investigating the problem and only involve the broadcaster if the investigation reveals there is a broadcaster issue. Comcast expects that the burden-shifting proposal will result in similar cooperation.

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<sup>31</sup> See *id.* at 11.

<sup>32</sup> See *Caption Quality Order* ¶¶ 88-104.

<sup>33</sup> See, e.g., AT&T Comments at 5; Charter *et al.* Comments at 12.

<sup>34</sup> See Comcast Comments at 3.



Nonetheless, in an effort to reach common ground with Programmers on this issue, Comcast is willing to support the Programmers’ proposal that VPDs certify to the Commission that “they have engaged in necessary and appropriate due diligence to identify the source of the captioning quality issue and resolve aspects of the issue within their control *before* ascribing any responsibility to programmers.”<sup>35</sup> Comcast detailed the steps it would typically take as part of its complaint investigation, and believes such measures would satisfy the “due diligence” element of the Programmers’ proposal.<sup>36</sup> Comcast is prepared to take the further step of including a certification statement in the burden-shifting notice that it sends to the programmer and the Commission.<sup>37</sup>

**C. The Commission Should Not Adopt A Compliance Regime Based on Joint and Several Liability.**

TDI *et al.* suggest that the Commission could consider holding programmers and VPDs jointly and severally responsible for quality issues on a one-year trial basis as a way to evaluate whether compliance responsibilities should be split between programmers and VPDs.<sup>38</sup> Comcast has two concerns with this approach. First, under such a liability regime, the VPD or programmer could be held responsible for a captioning problem over which it has no control. As noted, the burden-shifting approach addresses this shortcoming by subjecting both programmers and VPDs to potential enforcement but only for captioning problems over which each entity has

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<sup>35</sup> Programmer Comments at 12 (emphasis in original).

<sup>36</sup> See Comcast Comments at 7.

<sup>37</sup> See *id.* at 8; see also DirecTV Comments at 8 (supporting certification-type statement as part of communication to the Commission). Programmers also assert that MVPDs must be solely responsible for captioning in situations where the MVPD distributes IP video services in the home to non-traditional devices. See Programmer Comments at 9. Comcast disagrees, and believes that the burden-shifting model will work equally well in this scenario. The MVPD will continue to have a duty to ensure that it is passing through captions to such devices, but if the MVPD’s investigation shows that it is not responsible for a captioning issue, there is no reason why the burden to resolve the issue should not then shift to the programmer.

<sup>38</sup> See TDI *et al.* Comments at 7-8.

control.<sup>39</sup> Second, a one-year trial period, presumably to be followed by a further rulemaking to establish final rules, would create regulatory uncertainty and thereby make it difficult for programmers and VPDs to establish internal practices to comply with the rules. Comcast shares TDI *et al.*'s goal of creating a stable and effective compliance regime, and believes that can be best achieved through adoption of final rules in *this* FNPRM.

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For the foregoing reasons, and those set forth in Comcast's initial comments, Comcast urges the Commission to adopt its burden-shifting proposal, and reiterates its request that the Commission complete action on this issue prior to the effective date of the new caption quality rules on January 15, 2015.

Respectfully submitted,

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<sup>39</sup> See Comcast Comments at 3; *see also* ACA Comments at 11-12 (opposing joint and several liability).

## **DECLARATION OF CHRIS BYGRAVE**

1. My name is Chris Bygrave. My business address is 1800 Bishops Gate Blvd., Mount Laurel, NJ 08054. The statements herein are based on personal knowledge, including information I obtained during my employment at Comcast, and my review of relevant documents.

2. I am the Senior Manager for Video Operations Compliance for Comcast Cable Communications, LLC ("Comcast") and have been employed by Comcast since 2002. I have served in my current role overseeing video accessibility issues for three years. As Senior Manager for Video Operations Compliance, I am responsible for developing, evaluating, and implementing standards and processes for video accessibility, including closed captioning and video description. I am also responsible for leading the team that provides customer support for accessibility concerns. This work includes a review of closed captioning customer complaints. I also work with industry partners, including broadcast stations and cable networks, to further improve quality in the delivery of closed captioning.

3. As part of Comcast's response to the Commission's Caption Quality Further Notice of Proposed Rulemaking, I oversaw a Comcast review of customer complaints that were filed in 2013 that required engineering follow up (as opposed to complaints that generally involved caption set-up and other device configuration issues). These included customer complaints received from the Commission as well as complaints received directly from customers.

4. This review identified a total of 426 complaints in 2013 that required engineering follow up. Of those complaints, 177 involved captioning issues that occurred upstream from Comcast and the remaining 249 complaints involved issues on Comcast's end. Of the 177

complaints that involved upstream issues, 103 involved cable networks and 74 involved broadcast stations/networks.

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 27 day of May, 2014.

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